IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 12.10.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.MANIKUMAR

Crl.O.P. No.21432 of 2002

Manjula ... Petitioner

vs.

M/s.Colgate Palmolive (India)
Limited, represented by
its authorised signatory
T.Harikumar. ... Respondent

Criminal Original Petition filed under section 482 Cr.Pc to call for the records relating to CC No.1130 of 2002, on the file of the VIII Metropolitan Magistrate, George Town, Chennai, and quash the same.

For Petitioner : Mr.K.Kannan

For Respondent : Mr.M.L.Joseph,
for M/s.Surana & Surana.
Mr.M.Babu Muthu Meeran, Additional Public Prosecutor,
to assist the Court.

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(Judgment, delivered by P.SATHASIVAM, J.)

The Order of reference made by T.V.Masilamani, J. reads as under:-

" CRL.O.P. No.21432 of 2002

This petition is filed to quash the proceedings in C.C.No.1130 of 2002 on the file of the VIII Metropolitan Magistrate, George Town, Chennai.

2. The averments in the petition are stated briefly as follows:-

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The petitioner is the resident of Alur in Kurnool District, Andhra Pradesh. She started business in consumer items and placed orders for supply of several consumer items with the respondent-company having its office at Mumbai. The respondent supplied goods on various dates from 21.7.2001 to 30.8.2001. The petitioner signed blank cheques and left with the respondent and as per the usual trade practice, the respondent filled up the amount for the values supplied in the cheque and received payment through bank. On account of the ill-health of the petitioner, she entrusted the business to her brothers and since they mismanaged the same, the business was closed down in or about September, 2000. In the meantime, the respondent presented the cheques for realisation at Mumbai and they were returned by the payee bank as dishonoured. Since the petitioner had no means to pay the entire amount, she filed the insolvency petition in I.P.No.40 of 2001 before the District Court, Kurnool. In the meanwhile, the respondent presented all the cheques to the collecting bank again at Chennai on 31.10.2001 and they were returned as dishonoured. Thereupon the respondent issued notice on 22.11.2001 which was received by the petitioner on 26.11.2001 to which she had also sent a reply on 7.12.2001 stating that the petition for adjudication her as an insolvent was pending. Ultimately, the insolvent petition on I.P.No.40 of 2001 was allowed on 18.4.2002. The respondent filed the complaint under Section 138 of the Negotiable Instruments Act in C.C.No.1130 of 2002 before the VIII Metropolitan Magistrate, George Town, Chennai having territorial jurisdiction. Since the petitioner is a permanent resident of a place in Andhra Pradesh, she finds it inconvenient to defend the petition pending before the said Court at Chennai and therefore, the said proceedings is liable to be quashed. Hence, the petition.

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3. The learned counsel for the petitioner has argued at the outset that the cheques mentioned in the complaint filed by the respondent are covered by the invoices against the specific purchase orders and therefore all of them represent distinct causes of action. Similarly, he has argued that since more than three offences of the same kind within a year cannot be clubbed together, the petition is

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violative of Section 219 Cr.P.C. and therefore, he has urged that on that ground alone, the criminal proceedings against the petitioner is liable to be quashed. Further, he has argued that the complainant had deliberately presented the cheques at Chennai to harass the petitioner even though they were originally presented for collection through the respondent's bank at Mumbai and therefore, in view of her inconvenience as she is residing far away from Chennai to stand trial in the above said proceedings, the petition has to be allowed. The respondent's counsel has submitted his argument with reference to the points raised by the petitioner's counsel as mentioned above.

4. On the side of the petitioner, the learned counsel has cited the decision rendered by M.KARPAGAVINAYAGAM, J. in M/s.PRINTO STICK v. M.L.OSWAL (1997 CRI.L.J. 2122) in support of his contention that in view of Section 219 Cr.P.C. more than three cheques could not be clubbed together to file the complaint under Section 138 of the Negotiable Instruments Act (called Act XXVI of 1881) and that in this case since the respondent filed the complaint on the basis of 16 cheques, it is violative of the mandatory provision referred to above. Hence he has urged that the petition has to be allowed quashing the said proceedings.

5. On the contrary, the learned counsel for the respondent has argued that the cause of action under Section 138(b) of the Act XXVI of 1881 arises only after issue of the statutory notice and the consequent non-payment of the amount by the bank from and out of the account of the drawer of the cheques within the time stipulated thereunder and that therefore, the number of transactions between the parties which culminated into issuance of the statutory notice is no ground to urge that under Section 219 Cr.P.C., the prosecution laid against the petitioner is not maintainable. In this connection, he has drawn my attention to the decision in DEEJAY CONSULTANCY SERVICES REP. BY ITS PARTNER AND ANOTHER v. N.K.R.SETHURAMAN (2000 (2) M.W.N.(Crl.) DCC MAD. 1) in support of such contention. As has been pointed out by the respondent's counsel, the following decisions have been quoted with approval by B.AKBAR BASHA KHADIRI, J. (As he then was):- (1) M/s.SRI SIVASAKTHI

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INDUSTRIES v. ARIHAND METAL CORPORATION (1992 XXXVI M.L.J. 102); (2) POPULAR DYES & CHEM. v. AISWARYA CHEMICALS (1994 (80) COMP. CAS. 610); and (3) NEW NARAYANA TRANSPORT COMPANY v. HANUTMAL JAIN (1993 M.W.N. 144) while rendering the decision in 2000 (2) M.W.N.(Crl.) DCC MAD. 1.

6. It is useful to extract the provision under Section 138 (b) of the Negotiable Instruments Act hereunder to appreciate the respective contentions of both parties:-

"138. Dishonour of cheque for insufficiency, etc., of funds in the accounts.-- Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless--

... ...

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;"

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The learned counsel for the respondent has further drawn my attention to the decisions in (1) K. GOVINDARAJ v. ASHWIN BARAI (1998 (1) M.W.N.(Cr.) 71); (2) STALION SHOX CO (P) LTD AND OTHERS v. AUTO TENSIONS (P) LTD ((1994) 79 COMP CAS 808 DELHI); and (3) T.M. SPINNING MILS v. M.R.COTTON ((2001) COMP CAS 597 KAR.) to fortify his above contention that the cause of action giving rise to the complaint

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under Section 138(b) of the Act is upon service of notice as contemplated therein and not upon dishonour of the cheques and that therefore Section 219 Cr.P.C. would not be applicable to the impugned proceedings. On a fair reading of the said decision, the complaints involved in those cases were with reference to more than 3 cheques in each case.

7. The learned counsel for the respondent has submitted further that in the decision 1997 CRI.L.J. 2122, an earlier decision of this Court is referred, namely, M/s.RUBY LEATHER EXPORTS REP. BY ITS PROPRIETOR, BASKAR v. K.VENU, REP. VANDHANA CHEMICALS ETC. (1994 (1) MAD.L.W. (CRL) 34), wherein also it was held that even though there is a patent violation of Section 219 Cr.P.C. as 5 cheques have been pressed into service to lay the prosecution against the accused, on that ground the impugned prosecution cannot be quashed and that the complainant is directed to choose before the trial Court the three cheques out of the said five cheques to continue the prosecution. Therefore, he has urged that the criminal proceedings laid therein also had not been quashed on the sole ground that there were five cheques involved in that case.

8. The learned counsel for the respondent has argued further that the number of transactions and the cheques issued prior to the issue of the statutory notice under Section 138(b) of the Act XXVI of 1881 could at best be considered as bundle of facts giving rise to a cause of action and that it is not a ground to quash the criminal proceedings against the drawer of the cheques. If such contention looms large and if it is accepted, I am of the opinion that it will be an altogether different view to be expressed by a Single Judge of this Court. It is relevant to point out that the learned counsel appearing for both sides have fairly conceded that no decision rendered by the Supreme Court or by a Division Bench of the High Court, Madras is available as on date exactly on the question of law that is posed for consideration in this petition. As referred to above, since there are divergent opinions expressed by the learned Single Judges of this Court, I am of the considered view that on an identical point of law, this Court need not render one more decision of a Single Judge

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and therefore, I find that in order to give a finality in the matter this petition may be referred for consideration by a larger Bench."

2. On the direction of the Hon'ble the Chief Justice, the above petition came to be posted before us for consideration and to answer the reference.

3. Since even in the order of reference, T.V.Masilamani, J. has narrated the case of the petitioner as well as the respondent, there is no need to refer the same once again. The main contention of the learned counsel for the petitioner is that, in view of Section 219 of the Code of Criminal Procedure, more than three cheques could not be clubbed together to file the complaint under Section 138 of the Negotiable Instruments Act (hereinafter referred to as Act) and that, in the case on hand, since the respondent filed the complaint on the basis of 16 cheques, it is violative of the mandatory provisions of Section 219 Cr.P.C. In view of the same, according to the counsel for the petitioner, the entire proceedings have to be quashed.

4. On the other hand, it is the stand of the respondent that the cause of action under Section 138(b) of the Act arises only after issuance of the statutory notice and the consequent non-payment of the amount by the bank from and out of the account of the drawer of the cheques within the time stipulated thereunder, therefore, the number of transactions between the parties which culminated into the issuance of the statutory notice is no ground to urge that under Section 219 Cr.P.C., the prosecution laid against the petitioner is not maintainable. It is also contended by the learned counsel for the respondent that the number of transactions and the cheques issued prior to the statutory notice under Section 138(b) of the Act could at best be considered as bundle of facts giving rise to a cause of action and that it is not a ground to quash the criminal proceedings against the drawer of the cheques.

5. T.V.Masilamani, J., while considering the above contentions, by observing that on alike issue, there are divergent opinions expressed by the learned single Judges of this Court and there is no authoritative decision by a larger Bench, referred the case so that a finality can be given in the matter.

6. Section 218 of the Code of Criminal Procedure speaks about 'separate charges for distinct offences'. Sub-Section(1) thereof makes it clear that, for every distinct offence of which any person is accused, there shall be a separate charge and every such charge shall be tried separately, however, the accused is free to make an application in writing and it is open for the Magistrate

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to try together all or any number of the charges framed against such person, if he is of the opinion that such person is not likely to be prejudiced by such course. Sub-section(2) makes it clear that sub-section(1) referred above will not affect the operation of the provisions of Sections-219, 220, 221 and 223.

7. Section-219 Cr.P.C., being relevant, we extract the same here-under,

> " 219. Three offences of same kind within year may be charged together.—
>
> (1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three.
>
> (2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code (45 of 1860) or of any special or local law:
>
> Provided that, for the purposes of this section, an offence punishable under section 379 of the Indian Penal Code (45 of 1860) shall be deemed to be an offence of the same kind as an offence punishable under section 380 of the said Code, and that an offence punishable under any section of the said Code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence. "

8. Sub-section(1) of Section 220 Cr.P.C. makes it clear that if, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence. Sub-section(2) provides that when a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in sub-section(2) of section 212 or in sub-section(1) of section 219, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.

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We are not concerned with other provisions of the Criminal Procedure Code.

9. Section 138 of the Negotiable Instruments Act, 1881, speaks about 'dishonor of cheque for insufficiency, etc., of funds in the account'. The referring Judge has already extracted Section-138 in para No.6 of the Order.

10. Now, we shall consider the implication of Section 219 Cr.P.C. in respect of cases arising under Section 138 of the Act. For that, we deem it useful and necessary to discuss the case laws throwing light on the issue.

A. In Ruby Leather Exports vs. K. Venu (1995 (Vol.82) Company Cases 776 = 1994 (1) L.W. Crl. 34), a learned single Judge of this Court held that where more than three transactions within a year form part of the prosecution under Section 138 of the Act, there is a violation of the provisions of Section 219 Cr.P.C. However, the learned Judge also held that on that ground, the impugned prosecution cannot be quashed and, in that event, the complainant will have to choose on which of the cheques he wishes to maintain the prosecution. It was also observed that the same shall be stated before the concerned Magistrate.

B. Following the above decision (Ruby Leather Exports Case), another learned single Judge, in M/s.Printo Stick & another vs. M.L.Oswal (1997 Crl.L.J. 2122), directed the learned Magistrate to comply with the provisions of Section-219 Cr.P.C. by asking the complainant to choose on which of the 4 cheques he would have the prosecution maintained and then go on with the trial and dispose of the same as expeditiously as possible.

C. In K.Govindaraj vs. Ashwin Barai (1998 (1) MWN (Cr.) 71), it was contended that the complaint before the trial Magistrate on the basis of six dishonoured cheques cannot be proceeded because the dishonour of each cheque will give a separate cause of action for filing a complaint under Section 138 of the Act as such position is clear from the provisions of Section-219 Cr.P.C. The learned Judge rejected the said contention. In the case before the learned Judge, six dishonoured cheques were given to the respondent therein in the months of September, October and November-1991, on various dates, that is, within a period of 12 months. In the complaint, the respondent/complainant would state that the accused required him to present all those six cheques together on 24.1.1992 and the complainant accordingly presented all the cheques together and they have been returned on the same date, ie., on 28.1.1992, with an endorsement 'Payment Stopped'. The learned Judge observed that each cheque will not give a separate

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cause of action in view of the request made by the petitioner/accused to present all the cheques on a particular date which was done by the respondent/complainant and so Section 219(1) Cr.P.C. is not attracted to the facts of the case. However, while considering the scope of Section 220(1) of Cr.P.C., the learned Judge concluded as follows:-

> " 6. Even otherwise Section 220(1) of Cr.P.C. states that if one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for every such offence. In the present case though the giving of six cheques by the petitioner/accused to the respondent/complainant may be on different dates but all those acts of giving these cheques were merged together to form the same transaction viz., the presentation of these cheques together on one particular day as requested by the petitioner/accused herein. In other words even though different cheques were given on different dates, the presentation of all these cheques formed the same transaction on the instruction of the petitioner/accused herein given to the respondent/complainant. Further the demand was also made by the respondent/complainant on the dishonouring of the cheques by giving one lawyer's notice and not several demands made by the respondent/complainant for the payment of the dishonoured cheques. In those circumstances, I am of the view that the petitioner/accused herein may be charged and tried at one trial for several such offence because the series of acts are so inter-linked or inter-connected together so as to form the same transaction of dishonouring the cheques on a single day on the presentation of the same as requested by the petitioner/accused herein."

D. In the decision reported in 2001 (Vol.107) Company Cases 597 (T.M.Spinning Mills v. M.R.Cotton), a learned Judge of the Karnataka High Court, in similar situation, considered the effect of Section 219 Cr.P.C. with reference to Section 138 Act and held as follows:-

> " In so far as the important question raised for consideration in this petition that the provisions of section 219 of the Criminal Procedure Code is attracted to the facts of the case is concerned, it is contended that cause of

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action for the complainant arose only after service of notice to the accused. It is pointed out that the complainant has issued a single notice calling upon the accused by way of demand to pay the cheque amount within 15 days from the date of service of notice and the accused failed to pay the cheque amount within the time stipulated under Section 138(b) of the Act and, therefore, the complainant filed a complaint within one month from the date of service of notice which is well within time. There is no bar for lodging a complaint for initiation of action under section 138 of the Negotiable Instruments Act as the accused committed the offence punishable under section 138 of the Negotiable Instruments Act. In fact it is not to his disadvantage but it is an advantage that a single complaint is lodged against the accused by the complainant. The cause of action giving rise to a complaint is upon the service of notice contemplated under section 138(b) of the Negotiable Instruments Act and not upon the dishonour of the cheques and, therefore, the contention canvassed by learned counsel for the respondent that the provisions of section 219 of the Criminal Procedure Code are not applicable to the proceeding under Section 138 of the Negotiable Instruments Act has to be accepted."

E. In Popular Dyes & Chem. vs. Aiyswarya Chemicals (1994 Vol.80 Company Cases 610), a learned Judge, while considering the prayer for quashing the complaint on the ground that it was violative of Section 219 Cr.P.C., concluded thus:-

" ..... No doubt, the cause of action for each cheque is distinct and separate. However, there is no warrant for the proposition of the petitioner that all the instances of dishonour of the cheque could not find a place in one complaint. It is significant to note that what section 219 of the Criminal Procedure Code contemplates is only the joinder of charges. The section itself appears under the head "joinder of charges". Only at the stage of framing of charges the requirements of section 219 of the Criminal Procedure Code are to be considered. Evidently, Section 219 of the Criminal Procedure Code cannot stand in the way of the court taking on file the present complaint and proceeding

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further. The inclusion of four instances of dishonour of cheques in one complaint cannot be a ground to quash the same by invoking the inherent jurisdiction of this court under Section 482 of the Criminal Procedure Code. In any event this cannot be the reason to quash the entire proceedings. The very object of section 219 is to prevent miscarriage of justice by clubbing together a number of offences and making it impossible for the accused to defend them. Quashing of the complaint for the reason urged by learned counsel for the petitioners would only lead to abuse of the process of the court. "

F. In Deejay Consultancy Services rep. by its Partner and Another vs. NKR Sethuraman (2000 (2) MWN (Crl.) (Dishonour of Cheques Cases) 1, the learned Judge concluded that the act of issuance of all the cheques merged into one transaction, and therefore, it cannot be said that the complaint is vitiated. In the case before the learned Judge, six cheques were issued from January, 1997, to June 1997; all those cheques presented into the Bank on one and the same date and returned on one and same date; and a single notice had been issued under Section 138 of the Act. After accepting the dictum laid down in the decision reported in 1997 (II) CTC 567 = 1998 (1) MWN (Cri) 71 (cited supra), the learned Judge concluded that "..... the act of issuance of all the cheques merged into one transaction, and therefore, it cannot be said that the complaint is vitiated."

G. In the decision reported in 2005 M.L.J. (Crl.) 484 (Mohammed v. State of Kerala), a learned Judge of the Kerala High Court, while considering the scope of Sections 218, 219 and 220(1) of Cr.P.C. with reference to the offences under Section 138 of the Act, concluded that the offences committed by the same person in respect of six cheques must certainly be held to be part of the same transaction and may be tried in a single trial. The learned Judge, by observing,

" 5. ..... Sec.219(1) Crl.P.C. refers to identical offences committed on different dates during a span of 12 months. Sec.219(1) permits joinder of those charges provided they are offences of the same kind.",

and adverting to the case law in Mohan Baitha v. State of Bihar ((2001) 4 SCC 350), concluded as follows:-

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" 9. In the facts and circumstances of the case, I am of the opinion that the offences in respect of six cheques must certainly be held to be part of the same transaction considering the purpose, the sequence, events, nature of the allegation, proximity of commission, unity of action etc. Therefore, it appears to be easy to conclude that the offences under Sec.138 in respect of those cheques can easily be held to be offences committed in the course of same transaction. If that be so, Sec.220(1) squarely applies.

10. .....

11. I am in these circumstances satisfied that course adopted by the learned Magistrate of directing that the trial can be held in one common trial for the offences committed in respect of six cheques is correct and does not warrant interference. The challenge fails."

H. In the decision reported in 1996 (3) Crimes 283 (Swarnalatha v. Chandramohan), a Division Bench of the Kerala High Court held that cases in respect of three cheques could be tried jointly even if cheques had been issued for different amounts if other conditions under Section 219(2) Cr.P.C. were satisfied. The Division Bench was considering an appeal filed by the complainant in C.C. No.698 of 1991 on the file of J.F.C.M.I, Kannur, against the acquittal of the respondent. The complaint was filed under Section 138 of the Negotiable Instruments Act and it was alleged that the respondent had drawn three cheques in favour of the complainant and when they were presented for payment, they were dishonoured and thus the respondent committed the offence under the act. When the said Appeal came up for hearing before the learned single Judge, the question arose was as to whether a single complaint could be filed in respect of three cheques. The learned Judge disagreed with the view expressed in Crl.R.P. No.734 of 1994 and referred the matter to a Division Bench. Amongst other points, the Division Bench considered the question as to whether the cases in respect of three cheques could be tried jointly in view of Section 219 of Cr.P.C. The following discussion and ultimate conclusion of the Division Bench are relevant,

" 5. The next question that is to be considered is whether the cases in respect of three cheques could be tried jointly, in view of Section 219 of the Criminal Procedure Code. The three cheques were drawn on different dates and they were for different amounts. But they were

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presented together for payment and they were dishonoured and a single notice was sent by the complainant to the drawer. The general rule is that every distinct offence of which a person is accused, there shall be separate charge and every such charge shall be tried separately, but the accused is given a privilege and he can submit an application in writing expressing his desire that all charges framed against him may be tried jointly. Section 219 of the Code of Criminal Procedure is an exception to the general rule and it says that, (1) when a person is accused of more offences than one of the same kind committed within the space of 12 months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three. Sub-clause (2) of Section 219 says that for the purpose of Section 219(1), offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code or of any special or local laws. As regards the offences coming under Section 138 of the Negotiable Instruments Act, punishment prescribed is imprisonment for a term which may extend to one year or with fine which may extend to twice the amount of the cheque, or with both.

6. The counsel for the respondent argued that the fine to be imposed on the accused varies depending upon the amount for which the cheque is drawn. It is submitted that in the instant case, cheque drawn on 15.4.1991 was for Rs.20,000/- and the cheques drawn on 15.5.1991 and 15.6.1991 were respectively for Rs.40,000/- and Rs.60,000/-. Therefore, it is contended that the fine, if any, to be imposed on the respondent would vary, and hence, it cannot be said that for each case there is a same amount of punishment as envisaged under Section 219(2) of the Code. Our attention was also drawn to a decision of the learned Single Judge in Crl.R.P.734 of 1992. In that case the learned Single Judge was pleased to observe that the punishment for offence under Section 138 is imprisonment for term which may extend to one year and or with fine which may extend to twice

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the amount of the cheque or with both; and therefore, the punishment which could be imposed on the accused are different because the amount of cheques issued are for different amounts and hence section 219 stands in the way of joint trial. A similar view has been taken by another learned Single Judge in Cr.A. No.142 of 1992. A contrary view is taken by another learned Single Judge in Cr.R.P. No.814 of 1992.

7. It cannot be assumed that merely because under Section 138 of the Act, a guideline is given regarding the quantum of fine to be imposed on the accused, there are different offences. The main punishment prescribed is imprisonment which may extend to a period of one year. As regards fine, it is stated that the quantum may extend twice the amount of the cheque. It is important to note that the fine is not a compulsory punishment and only the maximum amount is prescribed. These guidelines do not alter the nature of the punishment. In the matter of sentence, the magistrate is given a discretionary power depending upon the amount for which the cheque is drawn. This discretionary power in the matter of sentence does not alter the nature of the offence. So, even if the cheques had been issued for different amounts, if other conditions laid down in Section 219(2) are satisfied, the cases in respect of three cheques could be tried jointly. Moreover, this is a procedural law and the main question to be considered in whether the accused is seriously prejudiced by that. If the present procedure is adopted, the accused is not likely to be prejudiced and it will avoid multiplicity of cases. ...."

After finding so, the Division Bench set aside the acquittal of the accused and remanded the case to the trial court, directing the Magistrate to dispose of the case afresh.

11. In the case on hand, complaint in C.C. No.1130 of 2002 filed before the VIII Metropolitan Magistrate, George Town, Chennai-1, shows that towards discharge of a portion of the liabilities due and payable by the accused to the complainant for the purchase of various products, the accused issued 16 cheques, all drawn on Indian Bank, Halaharvy, Alur Taluk, Kurnool District, Andhra Pradesh, on different dates. The cheques were presented for encashment by the complainant in their Bank M/s.Bank of

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America, Anna Salai, Chennai-600 002, on 31.10.2001 and the same were returned dishonoured by the bankers M/s. Indian Bank, Halaharvy Branch, by their communication dated 07.11.2001 for the reason 'funds insufficient'. The complainant was intimated of the said dishonour by their bankers on 12.11.2001 and 17.11.2001. The complainant had issued a statutory notice to the accused on 22.11.2001. The said notice was duly received by the accused on 26.11.2001. It is the grievance of the complainant that, in spite of receipt of the said notice, till date, the accused has not paid the cheque amount. The details furnished in the complaint shows that the accused issued those cheques on different dates and that all the cheques were dishonoured for the reason 'funds insufficient'. The complainant had issued a single statutory notice to the accused on 22.11.2001 and, in the absence of compliance, the complainant filed C.C. No.1130 of 2002 for appropriate action.

12. The above said 16 cheques were drawn on different dates and they were for different amounts, but, they were presented together for payment and were dishonoured and a single notice was sent by the complainant to the drawer. The general rule is that every distinct offence of which a person is accused, there shall be separate charge and every such charge shall be tried separately. As observed by the Division Bench of the Kerala High Court in 1996 (3) Crimes 283 (cited supra), Section 219 Cr.P.C. is an exception to the general rule. As stated earlier, even though different cheques were given on different dates, the presentation of all those cheques formed the same transaction. Further, the demand was also made by the complainant on the dishonouring of the cheques by giving one lawyer's notice and not several demands for the payment of the dishonoured cheques. In those circumstances, we are of the view that the petitioner/accused herein may be charged and tried at one trial for several such offences, because, the series of acts are so inter-linked or inter-connected.

13. The very object of Section 219 is to prevent miscarriage of justice by clubbing together a number of offences and making it impossible for the accused to defend them. Sections 219 and 220 Cr.P.C. lay down different and distinct exception to the general rule contemplated under Section 218 Cr.P.C. in framing charges. We are of the view that the number of three offences underlined in Section 219 of the Code cannot control Section 220(1) of the Code.

14. In the instant case, the offences committed by the same person in respect of 16 cheques must certainly be held to be part of the same transaction considering the purpose, the sequence, events, nature of the allegation, proximity of commission, unity of action etc. In such circumstances, it is easy to conclude that the

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offences under Section 138 of the Act in respect of those cheques can be held to be offences committed in the course of same transaction. Section 219 (1) Cr.P.C. refers to identical offences committed on different dates during a span of 12 months. It permits joinder of those charges provided they are offences of the same kind.

15. In these circumstances, we hold that Section 219(1) Cr.P.C. permits joinder of all charges provided they are offences of the same kind. We are also of the view that the number of transactions and the cheques issued prior to the issuance of the statutory notice under Section 138(b) of the Act could at best be considered as bundle of facts giving rise to a cause of action and that it is not a ground to quash the criminal proceedings against the drawer of the cheques. We further hold that if the offences are of the same kind, the number of transactions between the parties which culminated into issuance of the statutory notice is no ground to urge that under Section 219 Cr.P.C., the prosecution laid against the petitioner is not maintainable.

16. In the case on hand, though the act of issuance of 16 cheques was on different dates, in view of the fact that a demand was made by issuing a common notice, the complaint cannot be said to be vitiated. To put it clear, though the giving of cheques by the accused to the complainant may be on different dates, all those acts of giving those cheques were merged together to form the same transaction viz., the presentation of the cheques together was on one particular date. In view of the fact that demand was also made by the complainant on the dishonouring of the cheques by giving one lawyer's notice and not several demands, we are of the view that the accused may be charged and tried at one trial for several such offences because the series of acts are so inter-linked or inter-connected together so as to form the same transaction of dishonouring the cheques, therefore, it cannot be said that the complaint is vitiated.

17. We answer the question raised accordingly. Consequently, the Criminal Original Petition is dismissed.

JI.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. THE VIII METROPOLITAN MAGISTRATE,
GEORGE TOWN, CHENNAI.

2. DO THRO THE CHIEF JUDICIAL MAGISTRATE
EGMORE CHENNAI 8.

3. THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS.

+ 1 cc to Mr. Surana & Surana, Advocate SR No. 47508

NA(CO)
SR/25.10.2006

Order in
Crl.OP.No.21432/02.

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